

## **REMARKS**

Claims 13-38 are pending in this Application. Claims 25-28 and 38 have been rejected under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, on the ground of indefiniteness. Claim 38 has been rejected under 35 U.S.C. 101. Claims 13-18 and 23 have been rejected under 35 U.S.C. 102(b) as anticipated by Errico patent 6,482,207, and claims 19-22, 24, and 35-37 have been rejected under 35 U.S.C. 103(a) as obvious over Errico, as stated in the Action. However, the Examiner goes on to discuss claim 29 and 32 under this same heading, possibly indicating that these claims also are being rejected.

It is noted with appreciation that claims 25-28, 30, 31, 33, and 34 have been found to be allowable.

The Examiner has required revision to the Abstract. A revised Abstract is submitted herewith.

The drawings have been objected to for two reasons. The Examiner has required “the slots penetrating the outer wall and connecting with the internal cavity” to be shown. However, these slots are already in Fig. 2, designated by reference numeral 8. As to the slots sloping forwardly, as required by claims 27 and 28, new Fig. 2a is supplied herewith as Replacement Sheet 1.

### **Rejection under 35 U.S.C. 112 and 101**

Claims 25-28 and 38 have been revised in light of the Examiner’s reasons for rejection in an effort to satisfy the 35 U.S.C. 112 requirements and to advance prosecution. Method steps have been introduced in claim 38 to overcome the 35 U.S.C. 101 rejection.

### **Rejection under 35 U.S.C. 102(b)**

Applicant respectfully traverses this rejection of claim 13-18 and 23 for the reasons set out below.

In the Action, the discussion starts out “Regarding claim 11.” Applicant takes this as referring to claim 13.

The structure and function of the Errico pedicle screw is completely different from Applicant's claimed invention. Only shank screw 100 of Fig. 1 of Errico has any relationship to the type of device Applicant has defined. Bearing in mind the Examiner's admonitions regarding functional statements, what the claims read on, and the manner of use, Applicant would like to point out how the language of claim 13 defines over Errico.

Claim 13, as amended, calls for an "anchoring portion and an application portion shaped and configured for connection with a prosthesis... said application portion being formed with a flared part whose outer dimensions widen from said end connected to said anchoring portion in a direction toward the outer end of said application portion." The Errico device is shaped in the exact opposite manner -- it tapers inwardly toward the outer end, if "outer end" is a term that can apply to the Errico device, since it has such a different and unrelated purpose. The end away from the threaded portion (Applicant's anchoring portion) tapers inwardly -- it does not widen from the anchoring portion outwardly "toward the outer end."

Claim 13 also states that the identified "flared part is elastically resilient transversely in the longitudinal direction." There is nothing so flared, nor anything in the Errico Fig. 1 device that is "elastically resilient transversely." Reference to the assembled device of Fig. 3 fares no better. If the Examiner is making reference to locking member 120 of Fig. 2c, that has no relevance whatever to the invention defined by claim 13. Locking member 120 is merely structured to lock rod holding element 140 to screw 100. All of that is irrelevant to the claim 13 invention embodiment because no aspect of Errico satisfies the quoted requirements of claim 13.

The Examiner's attempted use of the Fig. 2c locking member to satisfy the requirements of claim 13 is misplaced. A device cannot be taken out of context and squeezed into the wording of the claim in question just because, in the abstract, some non-functional structure appears. Locking member 140 can only be interpreted for its intended purpose. Claim 13 must be read in its entirety. As so read, the Fig. 2c device has no relevance whatever.

Claims 14-18 and 23 depend from claim 13 and are believed to define patentable structures for at least the same reasons as is claim 13.

**Rejection under 35 U.S.C. 103(a)**

Claims 19-22, 24, and 35-37 (and possibly claims 29 and 32) all depend, either directly or indirectly, from claim 13 and are believed to be allowable at least for the same reasons as is claim 13.


**CONCLUSION**

In view of the above amendments and discussion, it is believed that all the claims in this application define patentable invention embodiment over the applied prior art and reconsideration and early indication of allowance are requested. Should any issues remain unresolved, Examiner Woodall is invited to telephone the undersigned attorney.

The Commissioner is hereby authorized to charge any fees that arise in connection with this filing which are not covered by the money enclosed, or credit any overpayment, to Deposit Account No. 02-0460.

Respectfully submitted,

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